

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NICK GONZALEZ, et al., ) Case No.: 1:20-cv-00867 AWI JLT  
Plaintiffs, )  
v. ) SCHEDULING ORDER<sup>1</sup> (Fed. R. Civ. P. 16)  
UNITED STATES OF AMERICA, )  
Defendants. ) Pleading Amendment Deadline: 1/6/2021  
Discovery Deadlines:  
Initial Disclosures: 11/23/2020  
Non-Expert: 4/30/2021  
Expert: 7/9/2021  
Mid-Discovery Status Conference:  
2/1/2021 at 8:30 a.m.

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Non-Dispositive Motion Deadlines:  
Filing: 7/23/2021  
Hearing: 8/20/2021

Dispositive Motion Deadlines:  
Filing: 9/20/2021  
Hearing: 11/1/2021

Pre-Trial Conference:  
12/17/2021 at 10:00 a.m.  
Courtroom 2

Trial: 2/15/2022 at 8:30 a.m.  
Courtroom 2  
Jury trial: 2 days

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<sup>1</sup> The Court finds the information provided by the parties in their Joint Scheduling Report and worksheet (Doc. 12; Doc. 12-1) sufficient to schedule the matter without a hearing. Thus, the scheduling conference set for November 2, 2020 is VACATED.

1        **I. Information Concerning the Court's Schedule**

2            Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno Division  
3 of the Eastern District of California now has the heaviest District Court Judge caseload in the entire  
4 nation. While the Court will use its best efforts to resolve this case and all other civil cases in a timely  
5 manner, the parties are advised that not all of the parties' needs and expectations may be met as  
6 expeditiously as desired. As multiple trials are set to begin upon the same date, parties may find their  
7 case trailing with little notice before the trial begins. The law requires that the Court give any criminal  
8 trial priority over civil trials or any other matter. The Court must proceed with a criminal trial even if a  
9 civil trial was filed earlier and set for trial first. Continuances of any civil trial under these  
10 circumstances will no longer be entertained, absent a specific and stated finding of good cause. All  
11 parties should be informed that any civil trial set to begin during the time a criminal trial is proceeding  
12 will trail the completion of the criminal trial.

13            The parties are reminded of the availability of a United States Magistrate Judge to conduct all  
14 proceedings in this action. A United States Magistrate Judge is available to conduct trials, including  
15 entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local  
16 Rule 305. The same jury pool is used by both United States Magistrate Judges and United States  
17 District Court Judges. Any appeal from a judgment entered by a United States Magistrate Judge is  
18 taken directly to the United States Court of Appeal for the Ninth Circuit. The parties are informed that  
19 no substantive rulings or decisions will be affected by whether a party chooses to consent.

20            Finally, the Fresno Division of the Eastern District of California, whenever possible, is utilizing  
21 United States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant  
22 to the Local Rules, Appendix A, reassignments will be random, and the parties will receive no advance  
23 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern  
24 District of California.

25            Therefore, **within 10 days**, the parties are directed to e-mail their consent or decline form  
26 directly to the Clerk's Office to the attention of Roxanne Gonzalez at RGonzalez@caed.uscourts.gov.  
27 The forms should not be filed or otherwise transmitted to the assigned District Judge or Magistrate  
28 Judge.

1       **II. Pleading Amendment Deadline**

2           Any requested pleading amendments are ordered to be filed, either through a stipulation or  
3 motion to amend, no later than **January 6, 2021**.

4       **III. Discovery Plan and Cut-Off Date**

5           The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)  
6 on or before **November 23, 2020**.

7           The parties are ordered to complete all discovery pertaining to non-experts on or before **April**  
8 **30, 2021**, and all discovery pertaining to experts on or before **July 9, 2021**.

9           The parties are directed to disclose all expert witnesses<sup>2</sup>, in writing, on or before **May 14, 2021**,  
10 and to disclose all rebuttal experts on or before **June 11, 2021**. The written designation of retained and  
11 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**  
12 **shall include all information required thereunder**. Failure to designate experts in compliance with  
13 this order may result in the Court excluding the testimony or other evidence offered through such  
14 experts that are not disclosed pursuant to this order.

15          The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts  
16 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions  
17 included in the designation. Failure to comply will result in the imposition of sanctions, which may  
18 include striking the expert designation and preclusion of expert testimony.

19          The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
20 disclosures and responses to discovery requests will be strictly enforced.

21          A mid-discovery status conference is scheduled for **February 1, 2021** at 8:30 a.m. before the  
22 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,  
23 California. Counsel SHALL file a joint mid-discovery status conference report one week before the  
24 conference. Counsel also SHALL lodge the status report via e-mail to JL.Torders@caed.uscourts.gov.  
25 The joint statement SHALL outline the discovery counsel have completed and that which needs to be  
26 completed as well as any impediments to completing the discovery within the deadlines set forth in this  
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28          <sup>2</sup> If an expert will offer an opinion related to an independent medical or mental health evaluation, the  
examination SHALL occur sufficiently in advance of the disclosure deadline, so the expert's report fully  
details the expert's opinions.

1 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code  
2 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the  
3 intent to appear telephonically no later than five court days before the noticed hearing date.

4 **IV. Pre-Trial Motion Schedule**

5 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later  
6 than **July 23, 2021**<sup>3</sup>, and heard on or before **August 20, 2021**. Non-dispositive motions are heard at  
7 9:00 a.m., before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the United  
8 States District Courthouse located at 510 19<sup>th</sup> Street, Bakersfield, California.

9 No written discovery motions shall be filed without the prior approval of the assigned  
10 Magistrate Judge. A party with a discovery dispute must first confer with the opposing party in a good  
11 faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the  
12 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate  
13 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to the  
14 court. To schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk,  
15 Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with**  
16 **Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice**  
17 **and dropped from calendar.**

18 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening  
19 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the  
20 notice of motion *must* comply with Local Rule 251.

21 Counsel may appear and argue non-dispositive motions via teleconference by dialing (888) 557-  
22 8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk  
23 receives a written notice of the intent to appear telephonically no later than five court days before the  
24 noticed hearing date.

25 All dispositive pre-trial motions shall be filed no later than **September 20, 2021**, and heard no  
26 later than **November 1, 2021** in Courtroom 2 at 8:30 a.m. before the Honorable Anthony W. Ishii,

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28 <sup>3</sup> Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of  
discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery  
deadline.

United States District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.**

**V. Motions for Summary Judgment or Summary Adjudication**

**At least 21 days before** filing a motion for summary judgment or motion for summary adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues to be raised in the motion.

The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the issues for review by the court; 5) explore the possibility of settlement before the parties incur the expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed statement of undisputed facts **at least five days before** the conference. The finalized joint statement of undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint statement of undisputed facts.

In the notice of motion, the moving party **SHALL** certify that the parties have met and conferred as ordered above or set forth a statement of good cause for the failure to meet and confer. **Failure to comply may result in the motion being stricken.**

**VI. Pre-Trial Conference Date**

**December 17, 2021**, at 10:00 a.m. in Courtroom 2 before Judge Ishii.

The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2)**. The parties are further directed to submit a digital copy of their pretrial statement in Word format, directly to Judge Ishii's chambers, by email at AWIOrders@caed.uscourts.gov.

Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the

1 Court to explain the nature of the case to the jury during voir dire.

2 **VII. Trial Date**

3 **February 15, 2022**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii,  
4 United States District Court Judge.

- 5 A. This is a jury trial.  
6 B. Counsels' Estimate of Trial Time: 2 days.  
7 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of  
8 California, Rule 285.

9 **VIII. Settlement Conference**

10 If the parties believe the action is in a settlement posture and a conference with the Court would  
11 be fruitful, the parties may file a joint written request for a conference.

12 **IX. Requests for Bifurcation, Appointment of Special Master, or other**

13 **Techniques to Shorten Trial**

14 Not applicable.

15 **X. Related Matters Pending**

16 There are no pending related matters.

17 **XI. Compliance with Federal Procedure**

18 All counsel SHALL familiarize themselves with the Federal Rules of Civil Procedure and the  
19 Local Rules of Practice of the Eastern District of California and keep abreast of any amendments  
20 thereto. The Court insists upon compliance with these Rules to efficiently handle its increasing  
21 caseload, and the Court will impose sanctions for failure to follow the applicable rules.

22 **XIII. Effect of this Order**

23 The foregoing order represents the best estimate of the court and counsel as to the agenda most  
24 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the  
25 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered  
26 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by  
27 subsequent status conference.

28 **The dates set in this order are firm and will not be modified absent a showing of good**

1 cause even if the request to modify is made by stipulation. Stipulations extending the deadlines  
2 contained herein will not be considered unless they are accompanied by affidavits or declarations,  
3 and where appropriate attached exhibits, which establish good cause for granting the relief  
4 requested.

5 Failure to comply with this order may result in the imposition of sanctions.  
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7 IT IS SO ORDERED.

8 Dated: October 27, 2020

9 /s/ Jennifer L. Thurston  
10 UNITED STATES MAGISTRATE JUDGE

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